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April 7, 2006

VIA ELECTRONIC FILING

Hon. Michael L. Orenstein, U.S.M.J.
United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722-4438

Re: S&L Vitamins v. Australian Gold
05-CV-1217 (JS) (MLO)

Dear Magistrate Judge Orenstein:

We represent S & L Vitamins and Larry Sagarin in the above-captioned matter. We write in response to defendant's April 6, 2006, letter regarding its untimely subpoena to Andrew P. Daniels, CPA. (A copy of the subpoena was attached to our April 4, 2006, letter to the Court.)

Defendant is off the mark as to the timeliness of its subpoena. Defendant's assertion to the contrary, it could not have insisted on a response to the subpoena by March 31, 2006, when the subpoena was not even issued until March 30, 2006, the day before the discovery cutoff date. That time frame certainly would not have given Mr. Daniels a reasonable time by which to respond to the subpoena. Moreover, defendant only informed us of its intention to serve the subpoena during a deposition break on March 30, 2006, and never served us with a copy of it until April 4, 2006, the date on which we wrote to the Court. We could not have moved to quash the subpoena until we were informed that, in fact, it had been served. The foregoing timeline deprived S & L Vitamins the opportunity to move to quash the subpoena.

Additionally, defendant's argument that S & L lacks standing to object to the subpoena issued to its accountant is meritless. S & L absolutely has standing to object because the information sought in the subpoena belongs to S & L.

Defendant could have conducted depositions and issued subpoenas months ago. That it elected to do so on the eve of the discovery completion date is not an excuse for circumventing the Court's Order which is just what defendant has done in this instance.

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We expect that if, in fact, Mr. Daniels already has provided information to defendant's counsel that such information timely will be provided to counsel for S & L Vitamins. Our objection to the subpoena, however, still stands. We remain available at the Court's convenience should the Court have any questions concerning this submission.

Respectfully submitted,

Ronald D. Coleman

cc: Francis J. Earley, Esquire (via ECF)
Scott D. Matthews, Esquire (via first class mail)